IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.378 OF 2007.

Rajendra Narayanrao Kalyani ...Appellant

Versus

Riaz Ahmed Ismail Sayed ...Respondent

Shri R.S.Apte with Shri Mandar Limaye for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : 10th December, 2007.

P.C.:

1. Heard the Advocate appearing for the appellant. The Second Appeal is admitted on the following substantial questions of law:

(i) Whether the Appellate Court completely ignored the fact that admittedly what was agreed to be sold was a flat admeasuring area of 400 sq feet and as per the report of the Court Commissioner which is not challenged by any of the parties the area of the said flat was found 230 sq feet?

(ii) Whether the findings recorded by the Courts below are perverse in as much as going by the unchallenged report of the Commissioner the area of the suit flat was short by 170 sq feet even according to the agreement admittedly executed

by the parties?

(iii) Whether the Courts below have completely ignored the legal effect of section 34 of the Code of Civil Procedure, 1908 in as much as further interest at the rate of 18% per annum could not have been granted?

2. Printing is dispensed with. The Appellant is directed to file a private paper-book within a period of one year from today. If the paper-book is not filed within the stipulated period, the Appeal will stand dismissed for want of prosecution without further reference to the court.

JUDGE